MetTel
New York's Local Phone Company

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April 3, 2001

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Magalie Roman Salas, Esq., Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Presentation in CC Docket No. 96-98

Dear Ms. Salas:

Enclosed please find for filing in the above-captioned proceeding two (2) copies of the attached letter, which was sent today via overnight courier to Chairman Powell. If you have any questions, please contact me at 212.607.2010. Thank you for your cooperation.

Sincerely,

Irina Avagyan
MetTel

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Marshall Aronow
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April 3, 2001

Chairman Michael Powell
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Presentation in CC Docket No. 96-98

Dear Chairman Powell:

As CEO of Metropolitan Telecommunications ("MetTel"), I am writing to urge the Federal Communications Commission ("FCC") to promptly grant the Petition for Reconsideration of the Competitive Telecommunications Association ("CompTel") in the above-captioned proceeding. MetTel is a member of CompTel, and we strongly support the position that unrestricted access to purchase the combination of unbundled network elements known as the UNE Platform ("UNE-P"), including in the 50 largest metropolitan statistical areas ("MSAs"), is required to ensure that competition is able to become truly robust and innovation flourish. Granting CompTel's petition is necessary for residential users to see the benefits of local service competition promised by the Telecommunications Act of 1996 and for the entire market to reap the benefits of investment in innovative technologies.

Further, MetTel strongly opposes any attempt to limit UNE-P to residential, but not business, end-user subscribers. MetTel's position is based on its hands-on, market-based experience as a competitive carrier serving "mass market" residential and small business customers. Carriers like MetTel cannot serve residential users efficiently through UNE-P without the ability to serve small and medium business customers through UNE-P at the same time. Simply put, if the Commission establishes a bright-line test that UNE-P can be used for residential but not business users, the Commission will

have gone a long way toward ensuring that UNE-P cannot feasibly be used to serve ***any*** customers.

Before I proceed further, let me acquaint you with my company. MetTel was founded in 1996. Our primary focus has always been to provide high quality telecommunications service to residential and small business customers. At present, 80% of MetTel's customer base is comprised of residential subscribers. MetTel provides local service through the UNE-P in competition with Verizon throughout New York and Pennsylvania. MetTel provides both voice and advanced data services not only in suburban and outlying areas, but also in high-density regions, including Manhattan. While MetTel uses UNE-P to provide local voice services, we have been steadily and intensively building out facilities based on the newest, most innovative technologies and models. MetTel has constructed its own OC-3 capacity ATM SONET network. It has made multi-million dollar investments in collocation cages, multiple fiber rings, fully equipped and operational data cages, and a fully operational, state-of-the-art POP. As a result, MetTel can provide both circuit switched voice and high quality, advanced services to most of Manhattan, including historically underserved areas such as Spanish Harlem.

MetTel's business plan is premised upon our ability to provide a combination of voice and advanced data services to small business and residential subscribers. The ability to use the UNE-P to provide local voice services is a critical component of our approach to serving customers. The ubiquitous availability of the UNE-P has freed MetTel to invest significant funds in our backbone advanced services network. We do not have the resources or the critical mass to both establish a switch-based voice network (even were it efficient to serve residential and business users with self-provided switching, which I believe it is not) and to build an advanced services network. Moreover, we would not be able to construct a viable business plan for establishing an advanced services network without a real capability in the marketplace to provide consumers with a full suite of local and long distance calling services. In sum, without UNE-P, MetTel cannot provide its full service package to end users, and it could not justify building an advanced data services network. As you can see from MetTel's situation, expanding the availability of UNE-P is not only essential to helping all subscribers benefit from local competition, it played a key role in facilitating the investments necessary to bring facilities-based advanced services to residential and small business users.

Through the course of this proceeding, some ILECs have urged the FCC to restrict the availability of UNE-P for business customers. Shamefully, even a few entrenched CLECs have supported that argument in an effort to short-circuit new competitive entry. The UNE-P opponents have argued that because some CLECs claim to be capable of using self-provided switching to serve some small business customers, the FCC should force all CLECs to serve small business customers through self-provided switching. (Since in our experience there is virtually no wholesale switching available in today's market, the question ultimately boils down to whether these subscribers can be served through self-provided switching.) Although it is not entirely clear, this argument

seems to rest on the premise that the FCC would be eliminating the incentive for efficient market entry and efficient investment to let CLECs use UNE-P to provide local service to business customers.

Clearly, the parties making those arguments have never been in the position of actually providing local service to residential users as the new entrant in a market characterized by decades of monopoly control by Verizon and other incumbent LECs. MetTel has been, and is today, in that position. And we can verify from our own experience that having access to UNE-P for local voice services to small business customers is a vital component of our business plan. Without our current small business customers – which today represent 15% of MetTel's customer base – we would not be able to achieve the overall margins necessary to provide local voice services to the 80% of our subscribers who are residential in nature. It bears some emphasis that none of the opponents of UNE-P has ever tried to use UNE-P to serve only residential users. If the Commission desires that residential customers see the benefits of local competition, then it must not restrict the UNE-P to business customers.

Also, the Commission should squarely reject the theory being advanced by the ILECs, and a few complicit CLECs, that expanding the availability of UNE-P would discourage efficient facilities deployment. Because the UNE-P embodies TELRIC pricing, this argument is nothing less than an attack on the TELRIC pricing methodology for network elements. I will not remind you in detail of the FCC's many past findings in favor of the TELRIC approach, but I do want to emphasize that many of the same CLECs who attack UNE-P – and hence question the validity of the TELRIC methodology – strongly support, and indeed rely upon, TELRIC-based pricing of other network elements (e.g., local loops). If TELRIC works for local loops and other network elements without discouraging efficient investment, then it does so for UNE-P as well.

The FCC also should reject the argument that UNE-P is unnecessary if there are four or more collocators in an MSA (or a certain number of wire centers in an MSA). This argument does not even qualify for consideration unless there is some evidence that collocators make sufficient wholesale switching capacity available to CLECs in competition with the incumbent LEC. In fact, MetTel's experience is that collocators rarely if ever provide wholesale switching at all, much less in sufficient amounts to constitute a meaningful alternative to UNE-P. Most collocators do not even install a switch, as they use their collocation arrangement for xDSL or similar services. (MetTel itself has completed 8 collocations and is completing an additional 7 in Manhattan but does not own any circuit switching facilities.) Further, many collocation arrangements are not in active use today due to the carrier's financial or other problems. And even when a carrier can access a circuit switch through a collocation arrangement, it usually does not offer wholesale switching commercially. In today's market environment, the existence of a certain number of collocators simply does not correlate with either (i) the ability of CLECs to use self-provided switching to offer local services to customers, or (ii) the availability of wholesale switching functionality for use by CLECs to provide local services to residential and small business users.

Additionally, at the time the Commission made its earlier determination that carriers seeking to serve small business customers (those with purchasing less than a DS1 level of capacity) would not be impaired in their ability to serve those customers if they were required to self-provision a circuit switch, the capital markets were considerably more favorable to this approach than they are today. In the ensuing passage of time since the UNE Remand Order was released, the competitive industry has seen multiple bankruptcies and market value declines in excess of 80%; leading many investors to conclude that self-provisioning has proven to be too capital intensive even for the well capitalized larger CLECs. Moreover, at this point, there is no doubt in my mind that more self-provisioning CLECs will fail in the coming months. In fact, even carriers that have embarked on a dual UNE-P and self-provisioning model (*i.e.*, North American Telecom) have proven that the costs associated with self-provisioning, in conjunction with ILEC delays and difficulties, can be insurmountable.

On the other hand, the few successes in this industry have come from ILEC consolidation, ILEC growth in the local data, and now, long distance market which, unlike the local market, is entirely free of the performance and delay issues that CLECs confront on a daily basis. Five years after the passage of the Act, unrestricted access to unbundled local switching for the small to medium size CLEC, remains the only approach to a competitive local market. This approach is not one that favors any particular type of CLEC, but an approach that is available to all CLECs, including those that are experiencing significant difficulties in self-provisioning. In the present climate, the only argument that should be promoted in competition's favor is an enlarged UNE-P offering rather than a restricted one. Over time, and only through the imposition of additional and stricter performance standards on the ILECs, will wholesale switching and self-provisioning develop into genuine free-market alternatives.

In the current telecommunications environment, the only viable option for any carrier is to be able to offer a comprehensive basket of telecommunications services. Recent events have clearly demonstrated that neither voice nor data offerings are independently sustainable. In order to encourage the kind of time and resource consuming deployment of innovative technologies, that the Commission wants to foster, it is essential that carriers be able to rely on UNE-P as a means of market entry to provide voice services. In this way, carriers will be free to invest in advanced voice and data technologies without having their resources encumbered by the replication of existing, simpler, voice technology.

In sum, MetTel needs unrestricted access to the UNE-P for all customers throughout its service territory in order to economically serve residential customers and to continue to have access to capital markets. Without unrestricted access to the UNE-P, MetTel and no doubt other carriers will be impaired in their ability to bring both traditional and advanced telecommunications service competition to "mass market" consumers. Both MetTel and its thousands of customers (representing over 70,000 access lines in New York alone) depend on MetTel's continued access to ILEC UNEs, consistent with the legal obligations on ILECs, and rights granted to CLECs, under the Telecommunications Act of 1996. Thus, the Commission should grant CompTel's

pending petition for reconsideration, and reject pleas to limit the UNE-P to residential customers.

Finally, I would be grateful for the opportunity to meet with you personally to discuss this matter, which is of vital importance to MetTel and the competitive industry. Thank you, in advance, for your gracious and thoughtful consideration of our concerns.

Sincerely,

Marshall Aronow
Chief Executive Officer
MetTel

cc: Commissioner Harold Furchtgott-Roth
Commissioner Susan Ness
Commissioner Gloria Tristani
Dorothy Attwood
Rebecca Beynon
Kyle Dixon
Jordan Goldstein
Sarah Whitesell
Magalie R. Salas (2 copies)